

Environmental Regulations Quick Reference for Railroads

Railroad construction, improvement, and maintenance activities have the potential to affect the natural environment; therefore, it is important that all railroad companies coordinate with the appropriate federal or state agency **PRIOR** to beginning construction or maintenance activities in order to determine if permits or special construction provisions are needed. The following information is intended to provide some basic guidance on environmental coordination.

An environmental review or study may be required for certain projects including new construction and those significantly impacting bodies of water.

1. Provide DOT with USGS or GIS maps and drawings of the project.
2. You can request that DOT provide guidance regarding the environmental document requirements.
3. No project work shall be started before a satisfactory environmental review is completed.

Explain the environmental benefits and impacts that will result from the project, including answering the following questions:

- Are there wetlands or streams on or near your project site? If yes, how close is your project site to those wetlands or streams?
- Has your project site been evaluated for archaeological or historic resources? **If yes, please submit the cultural resources report.**
- What animals, birds, and plants are present on your project site (those species that would be considered endangered, threatened, or monitored by state or federal agencies)?
- Have you completed the State Environmental Policy Act (SEPA) process? **If yes, please submit a copy of the documentation.**
- What federal, state, and local permits will be needed for your project?

U.S. Army Corps of Engineers (USACE)

Before you start any project that might affect wetlands, streams or waters, contact the Corps project manager for your county. It is essential that when you plan your project, you seek all practical attempts to AVOID or MINIMIZE impacts to wetlands or Waters of the US, as required under the Clean Water Act.

****In the case of routine or emergency maintenance activities, railroads should still coordinate with the appropriate Corps project manager, as a Nationwide Permit 3 (NWP 3) for maintenance might be required. Coordination should include a letter to the Corps representative defining the proposed work. For more information regarding NWP 3, visit the following link:***

http://www.saw.usace.army.mil/Portals/59/docs/regulatory/regdocs/NWP2012/NWP3_3-23.pdf

For more information regarding Section 404 permitting visit the following link:

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

North Carolina USACE county contacts:

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/Contact/CountyLocator.aspx>

N.C. Division of Water Quality (NCDWQ)

A 401 Water Quality Certification (WQC) is required for any federally permitted or licensed activity that may result in a discharge to waters of the U.S. ***Typically, if the USACE determines that a 404 Permit or Section 10 Permit is required because your proposed project involves impacts to wetlands or waters, then a 401 WQC is also required.***

For more information regarding obtaining a 401 Water Quality Certification, visit the following link:

<http://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/401-wetlands-buffer-permits>

For more information regarding water resources, visit the following link:

<http://deq.nc.gov/about/divisions/water-resources>

To contact a Regional Office, visit the following link: <http://deq.nc.gov/contact/regional-offices>

U.S. Fish and Wildlife Service (USFWS)

Section 7 applies to any Federal action that may affect listed species or designated critical habitat.

Private individuals are affected by Section 7 only when their action requires a Federal permit (e.g. USACE Section 404 permit) or funding. For more information regarding Section 7 coordination, visit the following link: <http://www.fws.gov/southeast/es/consultation.htm>

FWS authorizations called "Incidental Take Permits" are required when non-federal activities will result in "take" of threatened or endangered species (as defined in the Endangered Species Act, or ESA). The FWS's decision to issue a permit is based upon a conservation plan, which must accompany an application for incidental take. This type of plan is often referred to as a "Habitat Conservation Plan" or "HCP." The purpose of the HCP and permit is to allow these activities by determining and minimizing the level of take and minimizing and mitigating for that take to the maximum extent practicable. For more information regarding HCPs, visit the following link: <http://www.fws.gov/endangered/what-we-do/hcp-overview.html>

Before beginning a project, contact the appropriate field office to determine if threatened or endangered species might be affected. To contact a field office, visit the following link:

<http://www.fws.gov/nc-es/>

N.C. Division of Coastal Management (NCDCM)

If you are planning any sort of development -- from a sandbag structure to a bridge to a condominium -- in the coastal area, and your project is in an Area of Environmental Concern (AEC), you are probably going to need a Coastal Area Management Act (CAMA) permit. You will also need to follow development rules specific to that AEC.

Twenty North Carolina counties are subject to the rules and policies of the Coastal Resources Commission, which administers the Coastal Area Management Act. If you are planning to develop in one of these counties, check to see whether your project is also in an AEC. If it is, you may need a CAMA

permit. For more information regarding AECs and CAMA permits, visit the following link:
<https://deq.nc.gov/about/divisions/coastal-management/coastal-management-permit-guidance>

For a list of the 20 CAMA counties in North Carolina, visit the following link:
<http://deq.nc.gov/about/divisions/coastal-management/about-coastal-management/cama-counties>

If your project is in one of these areas, contact the Division of Coastal Management office nearest you:
<http://deq.nc.gov/about/divisions/coastal-management/about-coastal-management/dcm-offices-program-areas>

Consequences for violations

USACE

Performing unauthorized work in Waters of the United States or failure to comply with the terms of a valid permit can have serious consequences. You would be in violation of Federal law and could face stiff penalties, including fines and/or requirements to restore the area. Enforcement is an important part of the Corps regulatory program. Corps surveillance and monitoring activities are often aided by various agencies, groups, and individuals, who report suspected violations.

NCDWQ

Civil penalties are fines assessed against a responsible party for violation(s) of environmental regulations. North Carolina General Statute 143-214.5(c) requires that specific assessment factors be considered to determine the penalty amount.

USFWS

Section 11 of the Endangered Species Act provides for civil penalties up to \$25,000 per violation and criminal penalties up to \$50,000 and/or a year in prison per violation.

NCDCM

Once a violation has occurred, NCDCM staff can issue a violation notice, halt development in progress, require restoration of the site and assess a penalty for the violation. In dealing with violations, NCDCM's first priority is to seek resource recovery through prompt, voluntary restoration of the damaged area. The division's enforcement authority allows the division to require restoration for activity that could not be permitted, and to assess civil penalties of up to \$10,000 for unauthorized work. In addition, the Coastal Resources Commission may also assess up to one-half the amount of the civil penalty, not to exceed \$2,500 for major development violations or \$1,000 for minor development violations, to recover the costs of investigations and enforcement involved with violations.